

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA  
Lincoln Division**

**In Re**

**Daniel L. Koch,**

**Debtor.**

**Wells Fargo Home Mortgage as  
servicer for Wells Fargo Bank,  
National Association,**

**its principals, successors and  
assigns**

**Movant,**

**v.**

**Daniel L. Koch, Debtor,**

**and  
Lisa Ann Williams, Co-Debtor**

**and**

**Kathleen Laughlin, Trustee,  
Respondents.**

**Case No. 11-40529**

**Chapter 13**

**AMENDED MOTION FOR  
RELIEF FROM  
THE AUTOMATIC STAY**

**MOVANT WAIVES 30 DAY  
HEARING**

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**AMENDED MOTION FOR RELIEF FROM AUTOMATIC STAY**

COMES NOW Wells Fargo Home Mortgage as servicer for Wells Fargo Bank, National Association, and its principals, Successors and Assigns, "Movant" herein, pursuant to Bankruptcy Rules 4001 and 9014, states and alleges as follows:

1. Daniel L. Koch ("Debtor") filed his Chapter 7 Bankruptcy petition on March 1, 2011. On April 25, 2011, the Bankruptcy converted to Chapter 13 and it is currently pending before this Court.

2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. Sections 151, 157 and 1334 and NEGenR 1.5(a). This is a core proceeding pursuant to 28 U.S.C. Section 157(b)(2). Venue is proper in this District under 28 U.S.C. Section 1409(a).

3. On October 31, 1997, a negotiable promissory note ("Note") was executed in favor of TMS Mortgage Inc., dba The Money Store, in the principal amount of \$26,975.00 plus interest to accrue thereon at the rate of 12.250% per annum. A copy of said Note is marked Exhibit 1 and is attached hereto and incorporated herein by reference.

4. The Note is secured by a Deed of Trust ("Deed") on certain real property and improvements located at 1620 West 6th Street, North Platte, NE 69101. A copy of said Deed of Trust is marked Exhibit 2 and is attached hereto and incorporated herein by reference. The Deed was recorded on November 12, 1997, in Book 565 Page 684. The subject real estate is legally described as follows:

**LOTS 6 AND 7, BLOCK 1, MINER HINMAN'S ADDITION TO  
NORTH PLATTE, LINCOLN COUNTY, NEBRASKA.**

(hereafter, the "Property").

5. Movant is the servicer of the loan.

6. Debtor has defaulted on the Note in that 3 post-petition payments for the months of May 2011 through and including July 2011 have been missed. The total post-petition arrearage due as of July 22, 2011 is \$3,067.42 and itemized below:

Quantity	Item	Rate	Amount
1	Payment Amount @	\$763.06	\$763.06
2	Payment Amount @	\$763.05	\$1,526.10
1	Late Charges @	\$28.26	\$28.26
1	Attorney Fees @	\$600.00	\$600.00
1	Attorney Costs @	\$150.00	\$150.00
	Grand Total @		\$3,067.42

7. The balance owed on the Note is approximately \$87,851.25. The fair market value of the property, according to the Lincoln County assessor's office, is approximately \$48,735.00. Movant asserts that Debtor enjoys no equity in the Property and such Property is not necessary for an effective reorganization.

8. In addition to Movant, the following entities may claim an interest in the Property:

- NONE

9. Pursuant to 11 U.S.C. § 362(d)(1) and (2), on request of a party in interest and after notice and hearing, the Court shall grant relief from the automatic stay, for cause, including non-payment or lack of adequate protection of an interest in property of a party in interest and/or if (a) the Debtor does not have equity in such property, and (b) such property is not necessary for an effective reorganization.

10. Movant asserts that Debtor's failure to make post-petition regular payments as required under the Note and Deed of Trust and lack of equity in the property, results in a lack of adequate protection of Movant's security interest and, therefore, a continuation of the automatic stay imposed under Section 362 places Movant's collateral in jeopardy. As such, grounds exist for granting relief from automatic stay, effective immediately upon entry of the order.

11. The Movant further seeks relief in order to, at its option, offer, provide and enter into any potential forbearance agreement, loan modification, refinance agreement or other loan workout/loss mitigation agreement. The Movant may contact the Debtor via telephone or written correspondence to offer such an agreement. Any such agreement shall be non-recourse unless included in a reaffirmation agreement.

WHEREFORE, Wells Fargo Home Mortgage as servicer for Wells Fargo Bank, National Association respectfully prays this Court:

Enter an Order granting relief from the automatic stay and finding that the fourteen (14) day stay period pursuant to Rule 4001(a)(3) shall be inapplicable; authorizing Movant to exercise its rights under the Note and Deed of Trust and applicable non-bankruptcy laws; authorizing Movant to pursue its state court remedies for possession of the subject real estate; authorizing Movant to, at its option, offer, provide and enter into any potential forbearance agreement, loan modification, refinance agreement or other loan workout/loss mitigation agreement; authorizing Movant to contact the Debtor via telephone or written correspondence to offer such an agreement, which shall be non-recourse unless included in a reaffirmation agreement; and for such other orders as the Court deems appropriate.

Respectfully submitted,

/s/ Jonathon B. Burford  
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Pamela B. Leonard, #37027  
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I certify that a true copy of the Above Pleading was served either electronically or via first class mail on July 22, 2011, upon the following parties:

Daniel L. Koch  
Debtor  
1620 West 6th  
North Platte, NE 69101

Lisa A. Williams  
Co-Debtor  
1620 West 6th Street  
North Platte, NE 69101

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U.S. Trustee  
111 South 18th Plaza  
Suite 1148  
Omaha, NE 68102

/s/ John Padilla  
John Padilla